HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.41 OF 2007

Between:

The District Collector, East Godavari District and others
. . .Appellants

AND

Thammisetti Peda Manga Thayaru and others
. .
.Respondents

:: JUDGMENT ::

Counsel for the Appellants : Government Pleader for
Social Welfare

Counsel for the Respondents : Shri B.V.Rama Rao
for Shri G.Krishnamurthy

19th January, 2007

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PER G.S.SINGHVI, CJ

Whether Deputy Collector (Tribal Welfare), Rampachodavaram, East Godavari District (appellant No.2 herein) could indirectly review order dated 17.06.1983 passed by his predecessor in L.T.R.P.No.162 of 1981 is the question which arises for determination in this appeal filed by District Collector, East Godavari District and four others for setting aside order dated 29.08.2006 passed by the learned Single Judge in Writ Petition No.25146 of 1995.

The respondents are widows of late Shri T. Pattabhirama Raju, late Shri Surya Prakasa Rao and late Shri Ganapathi and fall in the category of landless poor. Their father-in-law Shri Thammisetti Machara Raju was an agriculturist. He purchased land measuring Ac.2.28 cents covered by Survey No.15/3, Chenupakalu, hamlet of Gondolu Village of Addateegala Taluk, West Godavari District by registered sale deed dated 02.06.1966 from Shri Balla Christian Dasu, S/o Pentayya. After the death of Shri Thammisetti Machara Raju, the land is said to have been divided among his sons and the husbands of each of the respondents got Ac.0.76 cents of land. In 1981, appellant No.2 initiated proceedings for eviction of the husband of respondent No.2 and two others on the

ground that the transfer of land in favour of late Shri Thammisetti Machara Raju was in contravention of the provisions contained in the Andhra Pradesh (Schedule Area Land Transfer) Regulations, 1959 (for short 'the Regulations'), as amended by Land Transfer Regulations, 1970. The said proceedings were registered as L.T.R.P.No.162 of 1981. After enquiry, appellant No.2 vide his order dated 17.06.1983 dropped the proceedings. He held that all sale transactions in respect of the land had taken place between non-tribals since 1936 and there is no evidence to show that the same was in occupation of tribal at any time after 14.08.1917. For the sake of convenient reference, the relevant portions of that order are extracted below:

> " Ex.R1 is the copy from R.G.R. of Gondolu (V) which shows that the petition schedule land stands registered in the name of Murala Ramyamma and others who are non tribals. Ex.R.2 registered sale deed dt.8.5.1936 reveals that Sri Guttala Veerana purchased the petition schedule lands from Choda Achanna and others. Ex.R.3 registered sale deed dt.27.8.45 that Kancharla Venkata Ratnam purchased the petition schedule land from Adimoolam Appalaswamy and both are non tribals. Ex.R.4 registered sale deed dt.4.4.1953 reveals that Guttala Laxmi W/o Veeranna sold the petition schedule land to G. Ramayamma and both vendor and vendees are Adi-Andhras. Ex.R.5 Registered sale deed dt.12.8.1955 reveals that S. Janam Ratnam W/o Venkataswamy and others sold the petition schedule land to Mukka Narayanamma who is a settibaliji by caste and

> a non tribal. Ex.R.6 registered sale deed dt.10.5.1957 reveals that Mukka Narayanamma again sold the petition schedule land to Bella Christian Dasu who is a Christian. Ex.R.7 registered sale deed dt.1.5.1964 reveals that Balla Christian Dasu sold the petition schedule land to R.W.1.
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> As seen from Ex.R.1 to R.7 registered sale deed it is evident that all sale transactions therein were held in between non tribals since 1936. There is no evidence to show that the petition schedule land was under occupation of Tribal at any time after 14.8.1917. Hence the petition is dropped."

The appellants did not challenge that order by filing appeal or by taking recourse to the remedy available under Article 226 of the Constitution, but after a gap of 12 years, appellant No.2 initiated fresh proceedings and passed order dated 21.04.1995 for eviction of the respondents.

In the writ petition filed by them, the respondents pleaded that order dated 21.04.1995 is barred by res judicata; that there was no justification to initiate fresh proceedings on the ground of alleged contravention of the Regulations and that too after a gap of twelve years and that there is no evidence to show that the land has been transferred by tribals to the non-tribals in contravention of the provisions contained in the Regulations. In the counter filed on behalf of the appellants, it was averred that the land was originally held by Murala Ramayamma and Bada China Veeranna and Achanna, who were tribals and, later on, it was

transferred to the non-triabls.

The learned Single Judge relied on the judgment of the Division Bench in **Chintalapati Ramalinga Raju v. District Collector, Eluru**[1] and of the Single Bench in **Pillarisetti Harinath Babu v. Special Deputy Collector (Tribal Welfare), Bhadrachalam**[2] and held that appellant No.2 did not have the jurisdiction to review order dated 17.06.1983 passed in L.T.R.P.No.162 of 1981. The learned Single Judge further held that in the absence of any evidence to show that transfer of land by Shri Balla Christian Dasu to shri Thammisetti Machara Raju was in contravention of the Agency Tracts Interest and Land Transfer Act, 1917 or the Regulations, appellant No.2 could not have ordered eviction of the writ petitioners. While dealing with the objection of alternative remedy raised on behalf of the non-petitioners in the writ petition, the learned Single Judge observed as under:

> " Though learned Government Pleader submits that there is remedy of appeal to the District Collector against the impugned order, as much as the earlier order has become final and this court in the aforementioned judgments has categorically held that there is no provision in the regulations to review an order passed under the regulations, the submission of the learned Government Pleader cannot be accepted to drive the petitioners to the appellate authority at this stage. In any event, as no finding has been recorded with regard to

transfer of the said land from tribals to non-tribals, in contravention of regulations, the impugned order cannot be sustained."

Learned Government Pleader reiterated the objection of alternative remedy and argued that the learned Single Judge committed a serious jurisdictional error by entertaining the writ petition filed by the respondents. He further argued that even though the proceedings initiated by appellant No.2 in 1981 for eviction of the respondents were dropped, there was no bar to the initiation of fresh proceedings because the transfer of land by Shri Balla Christian Dasu to the father-in-law of the respondents was nullity.

In our opinion, there is no merit in the appeal, which is liable to be dismissed summarily. Article 226 of the Constitution of India, which empowers the High Courts to issue direction, orders or writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quowarranto does not contain any limitation on the exercise of the said power. However, in last 56 years, the superior courts have evolved several rules of self-imposed restraint including the one that the High Court will not entertain petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioner. In **Baburam v. Zilla Parishad**[3], the Supreme Court considered the issue of availability of alternative remedy and laid down the following proposition:

"When an alternative and equally

efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted.

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice."

In **Harbanslal Sahnia v. India Oil Corporation Ltd.**[4], the Supreme Court considered the situation in which the High Court exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

" The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion.

> In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: I) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. V. Registrar of Trade Marks { (1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

By applying the ratio of the aforementioned judgments, we hold that the learned Single Judge did not commit any error by overruling the objection raised on behalf of the appellants to the maintainability of the writ petition filed by the respondents.

On merits, we are in complete agreement with the learned Single Judge that appellant No.2 did not have the jurisdiction to indirectly review order dated 17.06.1983 passed in L.T.R.P.No.162 of 1981. In **Chintalapati Ramalinga Raju's case**, the Division Bench categorically held that the competent authority constituted under the Regulations does not have the power of review. Therefore, it must be held that appellant No.2 was not entitled to order eviction of the

respondents on the spacious ground that some material had not been considered by his predecessor while passing order dated 17.06.1983.

No other point has been argued.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, W.A.M.P.No.61 of 2007 filed by the appellants for suspending the operation of order impugned in the appeal is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 19.01.2007

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[1] 2000(2) ALT 155 (D.B.)
[2] 2006(4) ALT 247
[3] AIR 1969 SC 556
[4] (2003) 2 SCC 107